



VIA ECFS

May 24, 2021

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Rural Digital Opportunity Fund Auction, AU Docket No. 20-34; Rural Digital Opportunity Fund, WC Docket No. 19-126; Connect America Fund, WC Docket No. 10-90

Dear Ms. Dortch:

The Ensuring RDOF Integrity Coalition (“ERIC”)¹ submits this ex parte letter pursuant to Section 1.1206 of the rules of the Federal Communications Commission (“FCC” or “Commission”).² Caressa D. Bennet, Robert A. Silverman, and E. Alex Espinoza, counsel to ERIC, met by video conference (1) on May 20, 2021 with Austin Bonner, Legal Advisor for Wireline and Public Safety to Commissioner Geoffrey Starks; and (2) on May 21, 2021 with Carolyn Roddy, Chief of Staff and Senior Legal Advisor for Wireline Issues to Commissioner Nathan Simington, regarding the Rural Digital Opportunity Fund (“RDOF”) Phase I auction (“Auction 904”).

I. The Commission Should Release ERIC’s Informal Request for Public Comment.

ERIC requested that the Commission seek public comment on ERIC’s Informal Request to permit third party review of select RDOF applications under a protective order.³ The Informal Request has received support from NARUC, WSTA, and recently AARP, among others.⁴ ERIC is also among many rural broadband stakeholders and legislators

¹ ERIC is a coalition consisting of rural broadband providers, rural Americans, and local government officials who have joined together to work to ensure that the Federal Communications Commission’s Rural Digital Opportunity Fund proceeding will result in timely broadband service to rural America.

² 47 C.F.R. §1.1206.

³ Ensuring RDOF Integrity Coalition *Informal Request for Commission Action*, WC Docket No. 19-126, WC Docket No. 10-90, AU Docket No. 20-34 (February 25, 2021) (“Informal Request”).

⁴ Wisconsin State Telecommunications Association, *Information Request for Commission Action*, WC Docket No. 19-126, WC Docket No. 10-90, AU Docket No. 20-34 (March 26, 2021); Big Bend Telecom LTD, NTS Communications, LLC, Poka Lambro Telecommunications Ltd.,

that have asked the Commission to allow for more scrutiny and public input on RDOF applications.⁵ The need for this additional scrutiny and third-party review derives from brand new facts that arose directly from Auction 904 itself and the related performance commitments in the long-form applications of winning bidders.

ERIC reiterated that it has limited its request to applications filed by those winning RDOF bidders that have won \$200 million or more in funding or who seek to serve 100,000 or more locations.⁶ This means a maximum of twelve winning bidders could be subject to third party review. As such, the bulk of the long-form applications would not be subject to third party review and could continue to be processed by staff. Allowing further scrutiny by third parties is warranted as it adds more transparency and expertise, which is particularly important given the dollars involved and the risk to deployment of broadband should an unqualified bidder receive approval due to lack of information and/or analysis that third parties could provide to assist the Commission during the review process.

ERIC noted that Commission staff is not privy to many industry nuances and information concerning the geographic locations in rural areas and the costs associated with serving them as are those who have “boots on the ground.” ERIC believes that the FCC would be better informed by real-world experience and guidance on the ability of certain winning bidders’ technical and financial capabilities in serving high cost rural areas.

II. The Commission Should Announce Known RDOF Defaults as Soon as Possible So Those Locations May Be Eligible for Alternative Funding.

ERIC further urged the Commission to expeditiously release a Public Notice that identifies census block locations that the Commission currently knows to be in default, like those in New Mexico that recently were relinquished by AMG Technology Investment Group DBA Nextlink Internet (“Nextlink”). The immediate public release of this default information is critical to allowing such locations to become eligible for alternative broadband funding from local, state, regional, or other federal sources, which

PVT Networks, Inc. and Valley Telephone Cooperative, Inc., AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90, Petition to Deny and Request for Informal Action (March 26, 2021); Letter from James Bradford Ramsey, NARUC General Counsel, to Federal Communications Commission Chairwoman Jessica Rosenworcel and Commissioners Brendan Carr, Nathan Simington, and Geoffrey Starks, (March 29, 2021) (noting that RDOF dockets have pending “requests to increase needed scrutiny on specific applications” and that “[a]t a minimum the FCC should put these requests out for comment”); Letter from David Certner, Legislative Counsel and Legislative Policy Director, Government Affairs, AARP, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90 (May 20, 2021).

⁵ Letter from Senators Amy Klobuchar and John Thune and Representatives James E. Clyburn and Tim Walberg et al. to Former Chairman Ajit Pai, FCC, 1 (January 19, 2021); Letter from Michael R. Romano, Senior Vice President, Industry Affairs & Business Development, NTCA, to Jessica Rosenworcel, Chairwoman, FCC, AU Docket No. 20-34, WC Docket Nos. 19-126 and 10-90 (February 5, 2021).

⁶ See Letter from Caressa D. Bennet, Attorney for Ensuring RDOF Integrity Coalition, to Marlene H. Dortch, Secretary, FCC (filed March 11, 2021).

generally prohibit eligible areas from receiving duplicative broadband subsidies.⁷ Until the Commission actually announces RDOF defaults, administrators of these funding sources and the public will remain entirely unaware that buildout efforts to serve such locations under RDOF will never commence and these default locations will not be eligible for other funding.

III. The Commission Should Be Watchful for Potentially Impermissible Transactions with Private Equity Interests.

ERIC also discussed its concerns that private equity stakeholders may be misled into entering into dubious and possibly impermissible arrangements with high-risk RDOF applicants that currently lack the technical, financial, managerial, operational skills, capabilities, and/or resources to fulfill their RDOF commitments (e.g., conditioning financing on major ownership restructuring). ERIC encouraged the Commission to engage with and educate private equity investors to inform and warn them of the pitfalls of investing in RDOF applicants whose applications have not been granted and the risks associated with structuring tenuous ownership arrangements prior to completion of the application grant process. Similarly, ERIC expressed concern with the structuring of Letters of Credit (LOCs) that could result in RDOF funding being used to back the LOCs through impermissible arrangements that could prevent the FCC from getting back RDOF funds should a bankruptcy occur.

IV. Serious Consideration Should Be Given to ETC Designation Petitions of RDOF under the Commission's Jurisdiction.

ERIC called on the Commission to give serious consideration to the eligible telecommunications carrier ("ETC") designation petitions pending before the Commission in connection with Auction 904. Recent developments have highlighted public interest concerns (e.g., Charter requesting waiver and release from performance obligations for winning bid areas that have since been determined to be fully or partially served,⁸ and claims that SpaceX may lack sufficient spectrum access as conditioned on

⁷ Just today, the U.S. Department of Commerce's National Telecommunications and Information Administration ("NTIA") announced the availability of \$288 million in grant funding for the deployment of broadband infrastructure to be awarded to partnerships between states/municipalities and providers of fixed broadband service providers pursuant to the Consolidated Appropriations Act of 2021. NTIA's [Notice of Funding Opportunity](#) Announcement for these grants lists an August 17, 2021 application filing date. Moreover, other state and regional broadband funding programs have deadlines in June 2021 and beyond.

⁸ Rural Digital Opportunity Fund, Connect America Fund, Petition of Charter Communications, Inc.; Time Warner Cable Information Services (Kentucky), LLC; Time Warner Cable Information Services (Massachusetts), LLC; Charter Fiberlink CCO-MA, LLC; Charter Fiberlink – Missouri, LLC; Charter Fiberlink CCO, LLC; and Charter Fiberlink VA-CCO, LLC for Waiver of Rural Digital Opportunity Fund Deployment Requirements with Respect to Specific Census Block Groups and Locations in Kentucky, Massachusetts, Missouri, Virginia, and Wisconsin, WC Docket No. 19-126 WC Docket No. 10-90, *Petition for Waiver* (May 11, 2021).

the outcome of the pending 12 GHz rulemaking proceeding).⁹ ERIC applauds the Commission for allowing the public to provide comment on ETC petitions subject to Commission jurisdiction. However, because the substantive materials supporting such ETC petitions currently remain hidden from public view through strict confidential treatment of petitioners' RDOF long-form applications, it is even more imperative that the Commission ensure that ETC status is conferred only upon those that fulfill the Commission's ETC public interest standards.

Respectfully submitted,

/s/ Caressa D. Bennet

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cc: Austin Bonner
Carolyn Roddy

⁹ Letter from Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197 (May12, 2021).